

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Timothy Anderson

NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

Debtor

Chapter 7, Case No. 03-61149  
-----

TO: Timothy Anderson, INCLUDING TRUSTEE AND OTHER INTERESTED PARTIES

1. Deutsche Bank National Trust Company, as custodian or trustee, ("Movant"), a corporation, by its attorneys, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 1:00 am on September 28, 2004, in Courtroom 2, 118 South Mill Street, Fergus Falls, MN 56537 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on September 23, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 17, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, FRBP Nos. 5005 and Local Rule 1070-1. This is a core proceeding. The Chapter 7 case was filed on September 10, 2003, and is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001, and is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to the property of Debtor, subject to a mortgage to Movant.

6. Debtor above-named is the owner of certain real property located at 411 Wilson Avenue, Bemidji, MN 56601, legally described as follows, to-wit:

Lot 31, Block 1, Aldal's Subdivision and the South Half of Lot 4, Block 4, Finseth Addition to Nymore, Beltrami County, Minnesota.

7. The indebtedness of Timothy Anderson is evidenced by a Promissory Note and Mortgage dated January 13, 1999, filed of record in the Beltrami County Recorder's office on January 28, 1999, and recorded as Document No. 386972. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage was subsequently assigned to Movant.

8. The Debtor has failed to pay monthly mortgage payments since June 19, 2004, and is in default in the amount of \$ 258.81 together with reasonable attorneys fees and costs incurred pursuant to the note and mortgage. Debtor has failed to make any offer of adequate protection. Accordingly, Movant's interest is inadequately protected.

9. The total amount due under the mortgage and note as of the date of hearing is \$15,595.28.

10. The Debtor has executed a first mortgage in favor of on Deutsche Bank National Trust Company, which mortgage was filed of record on January 28, 1999, as Document No. 386971 in the original amount of \$48,785.00. Upon information and belief, the principal balance of said mortgage is still in that amount.

11. The Beltrami County Assessor's Office has estimated the value of the homestead as \$63,200.00, and accordingly, Debtor has no equity in the premises and the property is not necessary to an effective reorganization.

12. By reason of the foregoing, Movant is entitled to have the automatic stay lifted and vacated so it can recommence the mortgage foreclosure action pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: August 19, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Timothy Anderson

AFFIDAVIT OF PETITIONER

Debtor

Chapter 7, Case No. 03-61149  
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STATE OF California )

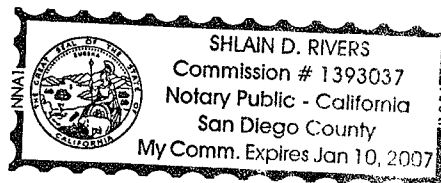
COUNTY OF San Diego )

Robin Williams, being first duly sworn, deposes and states on oath that she/he is employed by Chase Manhattan Mortgage Corporation as servicer for the movant in this action, that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his information.

Robin Williams

Subscribed and sworn to before me this  
10 day of August, 2004.

Shlain D. Rivers  
Notary Public



George, Inc.

28

386972 8

BELTRAMI COUNTY RECEIPT # 47241

1-21-99 AMOUNT \$ 37.49

AUDITOR

TREASURER LC

Prepared by:

OFFICE OF COUNTY RECORDER  
Beltrami County, MinnesotaI hereby certify that this instrument  
was filed in this office for record on the 28th  
day of January, A.D. 99, at 8:30  
o'clock A.M. and was duly recorded by  
Microfilm No. 386972

Ann F. Allen

COUNTY RECORDER

DEPUTY

When Recorded Return to:  
Advanta National Bank  
10790 Rancho Bernardo Road  
San Diego, CA 92127  
ATTN: DOCUMENT CONTROL

[Space Above This Line For Recording Data]

OPEN-END  
MORTGAGE

To secure Revolving Line of Credit

THIS HOME EQUITY LINE OF CREDIT OPEN-END MORTGAGE (the "Security Instrument") is given this 13th  
day of January, 1999. The mortgagor(s) is  
TIMOTHY C ANDERSON

(collectively, the "Borrower"), whose address is 411 WILSON AV BEMIDJI, Minnesota 56601

This Security Instrument is given to Advanta National  
Bank, which is organized and existing under the laws of Delaware, its successors and assigns, and whose address is 850  
Ridgeview Drive, Horsham, PA 19044 ("Lender"). Borrower does hereby grant, convey, bargain, sell, warrant, alien, enclose,  
release, confirm and mortgage to Lender and Lender's successors and assigns, the following described property located in  
Beltrami County, State of Minnesota, and more particularly described as follows:LOT THIRTY-ONE (31), BLOCK ONE (1), ADDAL'S SUBDIVISION AND THE SOUTH HALF  
(S 1/2) OF LOT FOUR (4), BLOCK FOUR (4), PINSETH ADD. TO NYMORE;

20-03784-00

MINNESOTA HOME EQUITY LINE OF CREDIT  
SUBORDINATE MORTGAGE

Rankers Systems, Inc., St. Cloud, MN

ANDERSON

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HL07208AA

(DS-15-97) IC-23527-31

386972

which has the street address of 411 WILSON AV BEMIDJI, Minnesota 56601

(the "Property Address").

Note: Borrower understands that some or all of the above real estate is normally protected by law from the claims of creditors, and Borrower voluntarily gives up Borrower's right to that protection for the above listed property with respect to claims arising out of this Security Instrument.

TOGETHER with all the improvements now or hereafter erected on the above-described property, and all existing and hereinafter acquired easements, rights, appurtenances, leases, rents (subject, however, to the rights and authority given herein to Lender to collect and apply such rents), profits, water, water rights, and water stock, and contract rights, pertaining to, arising from or situated at, upon or under the land located generally at the Property Address, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be, and shall remain a part of the property covered by this Security Instrument. All of the foregoing, together with said property (or the leasehold estate if this Security Instrument is on a leasehold), are collectively referred to as the "Property."

#### TO SECURE to Lender:

(i) The prompt repayment of all indebtedness due and to become due, as may be advanced and outstanding, and repaid and readvanced, from time to time, with interest thereon (the "Line of Credit"), pursuant to the terms and conditions of the Home Equity Line of Credit Agreement and Promissory Note of even date herewith, between Borrower and Lender, and all modifications, amendments, extensions, substitutions, replacements and renewals thereof (the "Agreement"). Borrower shall be furnished a conformed copy of this Security Instrument and the Agreement at the time they are signed or after they are recorded, within a reasonable time. Lender has agreed to make advances to Borrower under the terms of the Agreement. Such advances shall be of a revolving nature and may be made, repaid and remade from time to time, Borrower and Lender contemplating a series of advances to be secured by this Security Instrument. The total outstanding maximum principal balance owing at any one time under the Agreement (not including charges, and collection costs which may be owing from time to time under the Agreement) shall not exceed

SIXTEEN THOUSAND TWO HUNDRED FIFTY & 00/100

(S 16,250.00

) together with interest thereon (the "Credit Limit"). That sum is referred to in the Agreement as the Credit Limit. The entire indebtedness under the Agreement, if not paid sooner, is due and payable on January 19th, 2022, or on such later date as may be permitted by Lender in writing, or at such earlier date in the event such indebtedness is accelerated in accordance with the terms of the Agreement and/or this Security Instrument.

(ii) The payment of all other sums advanced to protect the security of the lien hereunder, and of all costs incurred by Lender in connection with the enforcement of its rights under this Security Instrument and/or the Agreement up to the amount of the Credit Limit, with interest thereon at the rate provided in the Agreement.

(iii) The performance of Borrower's covenants and obligations under this Security Instrument, the Agreement, and any prior mortgage or deed of trust, including, but not limited to, Borrower's promises to make payments when due.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property; that the Property is unencumbered, except for any prior mortgage or deed of trust (the "Prior Mortgage") and declarations, easements or restrictions of record listed in a schedule of exceptions to coverage in the title insurance policy insuring Lender's interest in the Property; and that Borrower will warrant and defend generally the title to the Property against all claims and demands.

Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Agreement, and all late charges and other charges provided in and authorized by the Agreement.

2. **Funds for Taxes and Insurance.** If required by Lender, and subject to applicable law, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; and (e) yearly mortgage insurance premiums, if any. These items are called "Escrow Items." Lender may, at any time collect and hold Funds, including reserves in excess of the amounts actually needed, using such methods of calculation as may be authorized or not prohibited, and in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974, as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law. Borrower shall not be obligated to make such payments of funds to Lender to the extent that Borrower makes such payments to the holder of the Prior Mortgage if such holder is an institutional lender.

MIN

386972

IN WITNESS WHEREOF, Borrower has executed this Security Instrument as of the date first above written.

Witnesses:

*Timothy C. Anderson*  
TIMOTHY C ANDERSON

(Seal)  
Borrower

(Seal)  
Borrower

(Seal)  
Borrower

(Seal)  
Borrower

STATE OF MINNESOTA,

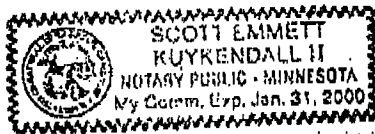
County ss:

On this 13th day of January 1999  
appeared Timothy C. Anderson

, before me, the undersigned officer, personally

person whose whose name is subscribed to the within instrument and acknowledged  
that he executed the same for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.  
My Commission expires:



Title of Officer

Certificate of Residence of Mortgagee

, the Lender herein named, hereby certifies

that  
it has a place of business at

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_

This instrument was drafted by:  
Advanta National Bank  
10790 Rancho Bernardo Rd.  
San Diego, CA 92127

Agent of Mortgagee

MIN

Bankers Systems, Inc., St. Cloud, MN

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ANDERSON

HL07208AA

(OR-15-07) 10-23527-39

Chase Manhattan  
P.O. Box 509011  
San Diego CA 92150-9944

16

420868

420868  
930

OFFICE OF COUNTY RECORDER  
Beltrami County, Minnesota  
I hereby certify that this instrument was  
filed in this office for record on the 16th  
day of September A.D. 20 02 at 9:30  
o'clock A. M. and was duly recorded by  
Microfilm No. 420868

Ann F. Allen

COUNTY RECORDER

DEPUTY

## CORPORATE ASSIGNMENT OF MORTGAGE

BELTRAMI COUNTY, MINNESOTA

SELLER'S SERVICING: 14928120 "ANDERSON" ADVA02

OLD SERVICING #: 1010001188

Date of Assignment: 08/23/2002

Assignor: ADVANTA NATIONAL BANK BY CHASE MANHATTAN MORTGAGE CORPORATION AS

ATTORNEY-IN-FACT at 10790 RANCHO BERNARDO RD., SAN DIEGO, CA 92127

Assignee: DEUTSCHE BANK NATIONAL TRUST CO. FKA BANKERS TRUST CO. OF CALIFORNIA  
N.A. AS CUSTODIAN OR TRUSTEE at 1781 E ST. ANDREWS PLACE, SANTA ANA, CA 92709

Executed By: TIMOTHY C ANDERSON To: ADVANTA NATIONAL BANK

Mortgage Dated 01/13/1999 and Recorded 01/28/1999 as Instrument/Document No.  
386972 in Book/Reel/Liber NA Page/Folio NA in BELTRAMI COUNTY, MINNESOTA.

Assessor's/Tax ID No: 80-93784-00

Property Address: 411 WILSON AVE. BEMIDJI, MN. 56601

KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of TEN and NO/100ths DOLLARS and other good and valuable consideration, paid to the above named Assignor, the receipt and sufficiency of which is hereby acknowledged, the said Assignor hereby assigns unto the above-named Assignee, the said Mortgage together with the Note or other evidence of indebtedness (the "Note"), said Note having an original principal sum of \$16,250.00 with interest, secured thereby, together with all moneys now owing or that may hereafter become due or owing in respect thereof, and the full benefit of all the powers and of all the covenants and provisions therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the Assignor's beneficial interest under the Mortgage.

TO HAVE AND TO HOLD the said Mortgage and Note, and also the said property unto the said Assignee forever, subject to the terms contained in said Mortgage and Note.

ADVANTA NATIONAL BANK BY CHASE MANHATTAN  
MORTGAGE CORPORATION AS ATTORNEY-IN-FACT  
On 8-26-2002 (DATE)

BY: [Signature]  
KEITH DAY, VICE PRESIDENT

POWER OF ATTORNEY RECORDED  
ON 4-11-01 INST. # 407373  
BOOK 111 PAGE 111

STATE OF California  
COUNTY OF San Diego

ON 8-26-2002 before me, COLLEEN LEPE, a Notary Public in and for San Diego County, in the State of California, personally appeared KEITH DAY, VICE PRESIDENT OF CHASE MANHATTAN MORTGAGE CORPORATION AS ATTORNEY-IN-FACT, 10790 RANCHO BERNARDO RD., SAN DIEGO, CA 92127, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]  
COLLEEN LEPE  
Notary Expires: 11/19/2005 #1330883



(This area for notarial seal)  
Prepared By: Dean Doss, Chase Manhattan Mortgage Corporation, 10790 Rancho Bernardo Rd, San D  
#1330883

When Recorded Return To: Keith Day, Chase Manhattan Mortgage Document Control,  
10790 Rancho Bernardo Rd, San Diego, CA, 92127-



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Timothy Anderson

MEMORANDUM OF LAW

Debtor

Chapter 7, Case No. 03-61149  
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Deutsche Bank National Trust Company, as custodian or trustee ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

**FACTS**

Movant holds a valid, perfected mortgage on real property owned by the Debtor. On the date of filing, the Debtor was delinquent under the note and mortgage. Since this case was filed Debtor has made no payments to Movant and the arrears total \$ 258.81.

**ARGUMENT**

1. Under Section 362.(d)(2) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." The Debtor in this case has failed to make payments required by the note and mortgage for a period of more than 3 months. Debtor has not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re: Video East, Inc., 41 B.R. 176 (Bkrcty. E.D. Pa. 1984); In Re: Frascatore, 33 B.R. 687 (Bkrcty. E.D. Pa. 1983).

2. Pursuant to §362(d)(2) of the Bankruptcy Code, relief from the stay is appropriate where Debtor has no equity and the property is not necessary to an effective reorganization. 11 U.S.C. §362(d)(2). See, In Re: Gellert, 55 B.R. 970 (Bkrcty. D. N. H. 1983). In this case the balance due Movant is \$15,595.28 and including the amount due the first mortgage holder, the

approximate total amount encumbering the property is \$64,380.28. The value of the property is approximately \$63,200.00. Clearly, the Debtor has no equity in the property, and as this is a Chapter 7 case, the property is not necessary to an effective reorganization.

### **CONCLUSION**

Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) for cause, where its interest in the secured property is not adequately protected. Movant is also entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(2) when Debtor has no equity, and when the property is not necessary to an effective reorganization.

Movant respectfully requests an Order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated: August 19, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Timothy Anderson

Debtor

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Chapter 7, Case No. 03-61149  
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Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on August 19, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

David G Velde  
Chapter 7 Trustee  
1118 Broadway  
Alexandria, MN 56308

Thomas L. D'Albani  
Cann, Haskell, D'Albani & Schueppert  
205 7th Street NW  
Bemidji, MN 56601

Timothy Anderson  
411 Wilson Avenue SE  
Bemidji, MN 56601

/E/ Erin Kay Buss  
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Timothy Anderson

ORDER

Debtor.

Chapter 7, Case No. 03-61149  
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The above entitled matter came on for hearing upon motion of Deutsche Bank National Trust Company, as custodian or trustee, ("Movant"), pursuant to 11 U.S.C. Section 362 on September 28, 2004, at the U.S. Bankruptcy Court, Fergus Falls, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED THAT:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors and/or assigns, has an interest, said property legally described as follows, to-wit:

Lot 31, Block 1, Aldal's Subdivision and the South Half of Lot 4, Block 4, Finseth Addition to Nymore, Beltrami County, Minnesota.

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this \_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Judge of the Bankruptcy Court